

§ 709.6

successful completion of a counterintelligence-scope polygraph examination.

§ 709.6 How often will an individual be subject to polygraph examination?

Positions identified in § 709.4(a)(1)–(8) are subject to a five year periodic, as well as an aperiodic, reinvestigation polygraph.

Subpart B—Polygraph Examination Protocols and Protection of National Security

§ 709.11 What types of topics are within the scope of a polygraph examination?

(a) DOE may ask questions that are appropriate to a counterintelligence-scope examination or that are relevant to the matter at issue in an exculpatory examination.

(b) A counterintelligence-scope polygraph examination is limited to topics concerning the individual's involvement in espionage, sabotage, terrorism, unauthorized disclosure of classified information, unauthorized foreign contacts, and deliberate damage to or malicious misuse of a U.S. government information or defense system.

(c) DOE may not ask questions that:

- (1) Probe a person's thoughts or beliefs;
- (2) Concern conduct that has no counterintelligence implication; or
- (3) concern conduct that has no direct relevance to an investigation.

§ 709.12 How does DOE determine the wording of questions?

The examiner determines the exact wording of the polygraph questions based on the examiner's pretest interview of the individual, the individual's understanding of the questions, and other input from the individual.

§ 709.13 May an individual refuse to take a polygraph examination?

(a) Yes. An individual may refuse to take a counterintelligence-scope or exculpatory polygraph examination, and an individual being examined may terminate the examination at any time.

(b) If an individual terminates a counterintelligence-scope or exculpatory polygraph examination prior to

10 CFR Ch. III (1–1–06 Edition)

the completion of the examination, DOE may treat that termination as a refusal to take a polygraph examination under § 709.14.

§ 709.14 What are the consequences of a refusal to take a polygraph examination?

(a) If an individual is an applicant for employment, assignment, or detail to one of the positions described in § 709.4(a)(1)–(8), and the individual refuses to take a counterintelligence polygraph examination required by statute as an initial condition of access, DOE and its contractors must refuse to employ, assign, or detail the individual to the identified position.

(b) If the individual is an applicant for employment, assignment, or detail to one of the positions described in § 709.4(a)(1)–(8) and the individual refuses to take a counterintelligence polygraph examination otherwise required by this part, DOE and its contractors may refuse to employ, assign, or detail the individual to the identified position.

(c) If an individual is an incumbent in a position described in § 709.4(a)(1)–(8) and the individual refuses to take a counterintelligence polygraph examination required by statute as a condition of continued access, DOE and its contractors must deny the individual access to the information or involvement in the activities that justified conducting the examination, consistent with § 709.15. If the individual is a DOE employee, DOE may reassign or realign the individual's duties, within the local commuting area, or take other action, consistent with that denial of access.

(d) If the individual is an incumbent in a position described in § 709.4(a)(1)–(8), and the individual refuses to take a counterintelligence polygraph examination as required by this part, DOE and its contractors may deny that individual access to the information or involvement in the activities that justified conducting the examination, consistent with § 709.15. If the individual is a DOE employee, DOE may reassign or realign the individual's duties, within the local commuting area, or take other action, consistent with that denial of access.

Department of Energy

§ 709.15

(e) If the individual is a DOE employee whose current position does not require a counterintelligence polygraph examination and is an applicant for employment, assignment, or detail to one of the positions described in § 709.4(a)(1)–(8), the individual's refusal to take a polygraph examination will not affect the individual's current employment status.

(f) If an individual refuses to take a polygraph examination as part of the Accelerated Access Authorization Program, DOE must terminate the accelerated authorization process and the individual may continue to be processed for access authorization under the standard DOE personnel security process.

(g) Since an exculpatory polygraph examination is administered at the request of an individual, DOE and its contractors may not take any adverse personnel action against an individual for refusing to request or take an exculpatory polygraph examination. DOE and its contractors may not record an individual's refusal to take an exculpatory polygraph examination in the individual's personnel security file, or any investigative file. DOE also may not record the fact of that refusal in a DOE employee's personnel file.

(h) If a DOE employee refuses to take a counterintelligence polygraph examination, DOE may not record the fact of that refusal in the employee's personnel file.

§ 709.15 How does DOE use polygraph examination results?

(a) If, following the completion of the polygraph test, there are any unresolved issues, the polygraph examiner must conduct an in-depth interview of the individual to address those unresolved issues.

(b) If, after the polygraph examination, there are remaining unresolved issues that raise significant questions relevant to the individual's access to the information or involvement in the activities that justified the polygraph examination, DOE must so advise the individual and provide an opportunity for the individual to undergo an additional polygraph examination. If the additional polygraph examination is not sufficient to resolve the matter,

DOE must undertake a comprehensive investigation of the individual, using the polygraph examination as an investigative lead.

(c) The Office of Counterintelligence (OCI) will conduct an eligibility evaluation that considers examination results, the individual's personnel security file, and other pertinent information. If unresolved issues remain at the time of the eligibility evaluation, DOE will interview the individual if it is determined that a personal interview will assist in resolving the issue. No denial or revocation of access will occur until the eligibility evaluation is completed.

(d) Following the eligibility evaluation, D/OCI must recommend, in writing, to the Program Manager responsible for the access that the individual's access be approved or retained, or denied or revoked.

(1) If the Program Manager agrees with the recommendation, the Program Manager will notify the individual, in writing, that the individual's access has been approved or retained, or denied or revoked.

(2) If the Program Manager disagrees with the D/OCI's recommendation the matter will be referred to the Secretary for a final decision.

(3) If the Program Manager denies or revokes the individual's access, and the individual is a DOE employee, DOE may reassign the individual or realign the individual's duties within the local commuting area or take other actions consistent with the denial of access.

(4) If the Program Manager denies the individual's access and the individual is an applicant for employment, assignment, or detail to one of the positions described in 709.4(a)(1)–(8), DOE and its contractors may refuse to employ, assign or detail the individual to the identified position.

(5) If the Program Manager revokes the access of an individual assigned or detailed to DOE, DOE may remove the individual from access to the information that justified the polygraph examination and return the individual to the agency of origin.

(6) If the Program Manager denies or revokes the access for an individual applying for a DOE access authorization